

24th July, 1764

ANSWERS

F O C P

JAMES PURVES Writer to the Signet,

T O T H E

PETITION of JAMES LINDSAY Messenger,

THE Respondent's unhappy Situation having obliged him to take Sanctuary in the *Abbey*, for Protection of his Person against the Diligence with which he was threatened, and to gain a little Time to settle with his Creditors, upon any Terms they shall please to prescribe, that are in his Power to comply with, a Petition has been presented to your Lordships in Name of *James Lindsay* Messenger, in Substance setting forth, That being employed to execute a Caption against the Respondent upon the 19th inst. he did accordingly apprehend the Respondent, and carried him into *John's Coffee-house*: That he sent a Cady in Quest of Mr. *Thomas Cockburn*, the Agent for the Creditor, whose Diligence he was to execute, for further Directions in that Matter; but that not finding Mr. *Cockburn*, he agreed to let the Respondent go, upon his Word of Honour to meet him in the same Coffee-house a Quarter after three that Afternoon; but that instead thereof the Respondent had retired to the Sanctuary: That he considers the Respondent to be still his Prisoner upon his Parole of Honour, and insinuates a Suspicion of the Respondent's intending to go abroad; and therefore prays Warrant to take the Respondent out of the Sanctuary, and to bring him

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him before your Lordships, to be dealt with according to Law.

Upon moving this Petition, the Respondent compeared by his Council, and moved for Liberty to answer the same, upon his finding Caution *judicio* *pro*, to the Extent of 300 *l. Sterl.* to attend all the Diets, when ordered by your Lordships, which being allowed of, and Caution was accordingly found. The following Answers are humbly offered.

And, in the *first* Place, the Respondent does deny, that any Caption was ever executed against him, or that he ever was made Prisoner upon that Caption. Thus far he admits, that *Lindsay* the Messenger having desired to speak with him in the Coffee house, they went in accordingly, when *Lindsay* told him that he had Orders from Mr. *Cockburn* to execute a Caption against him, but neither showed the Caption nor his Blazon, nor touched him with his Wand; But, on the contrary, as wanting some further Directions from Mr. *Cockburn*, sent a Cady in Quest of him; and, not finding him, did propose, that the Respondent should meet him and Mr. *Cockburn* at the said Coffee-house, between three and four that Afternoon, which the Respondent promised to do: But upon Reflection of the Distress and Ruin it would bring upon him, if there was truly an Intention to throw him in Jail, he does acknowledge, that, from the Terror he had conceived at the Thoughts thereof, he judged it more proper to retire to the Sanctuary, till he should have Time to deal with his Creditors, without the most distant Intention to leave the Country.

So standing the Case, the Answer in Point of Fact is, that he never was made Prisoner, and therefore cannot be made guilty of any fraudulent Escape out of the Messenger's Hands, and that he never passed any parole of Honour upon the Subject, further than as, upon *Lindsay's* proposing, that as they could not find Mr. *Cockburn* at that Time, they should meet again in the Afternoon, he consented thereto.

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Supposing the Fact to have been as stated in the Petition, he will be pardoned to doubt, whether that would be sufficient Cause to deny him the Privilege of this Sanctuary.

It is known to your Lordships how great these Privileges of Sanctuary were from the earliest Periods, as allowed of by all Nations, first established by the Law of God amongst the *Israelites*, and from thence transmitted down by all Christian Nations.

In more antient Times, the Temples and Churches were the great Sanctuaries, a wise political Institution in those early Times to create Reverence and Respect to the House of God, and which, in After-ages, was communicated to the Sovereign's Places of Residence; and however much those have of later Years been abridged and curtailed, particularly as to the Matters for which those Sanctuaries give Protection, they are still kept up to a certain and more limited Extent, chiefly for Protection of personal Liberty against the Diligence of Creditors.

The Abbey of *Holyroodhouse* is the chief Sanctuary that now remains in this Country, established by immemorial Usage, and its Privileges of Sanctuary never called in Question.

Thus far your Lordships have gone, as to find that it can give no Protection to fraudulent Bankrupts, more than for any other Crimes; and therefore, upon Complaints exhibited, charging the Party accused as guilty of fraudulent Bankruptcy, your Lordships have been in Use to grant Warrant to bring the Party accused to undergo a judicial Examination; and if from thence there arises any just Suspicion of his being a fraudulent Bankrupt, your Lordships commit him to Prison, or replace him in the Sanctuary, if nothing of that Kind appeared.

But supposing one in that unhappy Situation, to have been guilty of any particular Fraud, which would only found an Action for Reparation of Damages, it's believed no Instance has occurred, where such Person has been deprived the Privilege of the Sanctuary, as even, upon that Supposition, the Demand of
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the Creditor comes to be no other than a Claim of civil Debt. If the present Demand has any just Foundation, it must consist in this, that the Respondent had been guilty of something like a Deforcement, when, by Breach of his Parole of Honour, he withdrew himself from under the Caption which had already been executed against him. But as the Respondent has already said, that in Fact no Caption was ever executed, or so much as shown, or the Messenger's Wand produced, without which he could execute no Caption, was it ever so notorious, that he was a Messenger if he had not the Blazon and Wand to produce; so it's submitted to your Lordships, whether an alledged Breach of Promise of this Kind, however faulty in other Respects, would be sufficient to render him so criminal as to take him out of the Sanctuary.

In respect whereof, &c.

ALEX. LOCKHART.